

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

ALBERT SCHUHOLZ,)	
)	
Petitioner)	
)	
v.)	Civil Action
)	No. 04-3486-CV-S-RED-H
)	
ROBERT McFADDEN, WARDEN, et al.,)	
)	
Respondents.)	

ORDER AND JUDGMENT

Pursuant to the governing law and in accordance with Local Rule 72.1 of the United States District Court for the Western District of Missouri, the petition herein was referred to the United States Magistrate Judge for preliminary review under the provisions of § 636(b), Title 28, United States Code.

The United States Magistrate Judge has completed his preliminary review of the petition herein and has submitted to the undersigned a report and recommendation that petitioner be denied leave to proceed in forma pauperis and that the petition filed herein for a writ of habeas corpus be dismissed without prejudice.

Petitioner, in his writ of habeas corpus, seeks to challenge a provisional sentence imposed pursuant to 18 U.S.C. §4244. The sentence was imposed by the United States District Court for the Eastern District of Kentucky. In his report and recommendation, the United States Magistrate Judge recommended that the matter be dismissed without prejudice to the defendant's right to challenge his sentence in the committing court. Petitioner has filed

written exceptions to the report and recommendation of the Magistrate Judge in which he asserts that because the statute only provides for review if filed by defendant's attorney or guardian, that he is effectively denied the right to proceed pro se. 18 U.S.C. § 4247(h)

Having fully reviewed the record *de novo*, the Court finds that petitioner's claims are without merit. The defendant's remedies are in his committing court. The fact that the remedies may be limited by statute does not make them ineffective. Therefore, it is clear that the petition for writ of habeas corpus should be dismissed without prejudice, and that petitioner's exceptions must be overruled.

Therefore, after a full *de novo* review of the report and recommendation and the files and records in this case, it is concluded that the findings of fact, conclusions of law, and proposed action of the Magistrate are correct and should be approved. It is therefore

ORDERED that petitioner's exceptions filed herein be, and they are hereby, overruled.
It is further

ORDERED that petitioner be, and is hereby, denied leave to proceed in forma pauperis.
It is further

ADJUDGED that the petition for writ of habeas corpus be, and is hereby, dismissed without prejudice.

/s/ Richard E. Dorr
RICHARD E. DORR
United States District Judge

Date: March 9, 2006